IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I. T. A. No. 154/(Asr)/2014
Assessment Year: 2009-10

Citrus Estate, VPO Badal, Distt.- Sh. Muktsar Sahib [PAN: AABTC 0229Q] **(Appellant)**	Vs.	Asstt. Commissioner of Income Tax, Circle –II, Bathinda **(Respondent)**

Appellant by : Sh. Ashwani Kalia (C.A.)
Respondent by: Sh. Pawan K. Kumar, CIT- DR

Date of Hearing: 11.09.2018
Date of Pronouncement: 09.10.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the assessee directed against the Order by the Commissioner of Income Tax (Appeals), Bathinda ('CIT(A)' for short) dated 27.12.2013, dismissing the assessee's appeal contesting its' assessment under section 143(3) r/w s. 147 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 25.08.2011 for Assessment Year (AY) 2009-10.

2. The sole issue arising in the instant appeal is the taxability in law of a sum of Rs.19,50,441/-, being interest accrued on its' bank FDRs to the assessee-society, made on investment of its' corpus funds (Rs.16.24 lacs) and revenue grant (Rs.3.27 lacs).

3. The facts in brief are that the assessee, a Government society, is formed for the development of horticultural activities in the State of Punjab. Both its' corpus and working capital funds are funded by the State Government, and stand placed by way of term deposit/s with the bank/s, interest on which is to fund its' day to day activities (expenses). It, registered under the Societies Registration Act, 1860 on 25.07.2007, was registered as a charitable institution u/s. 12A of the Act on 30.08.2010. The assessee not returning the interest (on its' FDRs), or on the saving bank account for that matter, the same was brought to tax by the Revenue, even as the assessee being not registered (as a charitable institution) under the Act during the relevant year was not accorded exemption u/s. 11 of the Act on its' income.

4. The assessee's case before us, as before the Revenue authorities, is that it follows cash method of accounting, permissible u/s. 145 of the Act. There was, accordingly, no occasion for interest accrued being regarded as its' income for the relevant year, and which has been solely on the basis that the interest had accrued to the assessee, on which there is no quarrel. Toward this, the ld. counsel, Sh. Kalia, would take us to the statement of interest accrued on a FDR (for Rs.200 lacs) made during the year (10/5/2008), which stood matured on 10.5.2009, i.e., subsequent to the end of the relevant previous year on 31.03.2009.

5. We have heard the parties, and perused the material on record.

Our first observation in the matter is that the assessee stands since granted (i.e., subsequent to the assessment) registration u/s. 12A, i.e., on 30.08.2010 (stated as '07.02.2011' in the assessee's return of income, at PB pgs. 11-23). As such, where there is, as contended, and toward which we find no adverse finding, no change in the objects and activities of the assessee-society, i.e., as obtaining at the time of the grant of registration (August, 2010/February, 2011) <u>and</u> the relevant

year (being fy. 2008-09), the benefit of registration and, consequently, section 11, cannot be denied to the AO for want of registration. This is the consistent view of the Tribunal, for which reference may be made, by way of an example, to its order in *Dr. Shyam Lal Thapar Foundation v. ITO* (in ITA 592/Asr/2015 & 586/Asr/2016, dated 27/3/2108) wherein, after discussing the relevant provision (section 12A(2)) in detail, it concluded as under:

> 'We, in view of the foregoing, while holding that appellate proceedings cannot be regarded as assessment proceedings before the Assessing Officer, or as an assessment pending before him, equating thus the appellate and the assessment proceedings, which are separate and distinct, find no reason not to accept the assessee's prayer. This is as an assessee registered u/s. 12AA of the Act is to be, in view of s. 12A(2), deemed to be so registered for any other year for which the proceedings are pending at any (appellate) stage, provided of course that there is no change in the objects and activities of the entity during the intervening period.'

The applicability of section 11, i.e., *per se*, would materially alter the manner in which the subject issue would stand to be considered. The reason is simple. The system of accounting, cash or mercantile, as regularly employed, on the basis of which the income chargeable u/s. 28 or u/s. 56 is to be reckoned, is rendered irrelevant. The income of a charitable institution, in contrast to a business or other taxable entities, falls under Chapter III of the Act. It is not required to be assessed by classifying it under different heads of income, which are for the purpose of computing the taxable income. It is to be determined on the basis of the accounting income, i.e., following the well accepted principles of commercial accounting. Where, therefore, there is no or little uncertainty as to the ultimate realization of income, the same is to be recognized. The income under reference is by way of interest on term deposits with a public sector (nationalized) bank. Not only therefore there is no uncertainty as to its realization, the same stands in fact actually realized on the maturity of the FDR on 26.05.2009, i.e., prior to the date of the filing the return of income u/s. 139(1), even though the maturity proceeds stand re-deposited in another FDR with the bank, which though is another matter.

Continuing further, the said income, however, can be accumulated or set apart, as indeed it is, for being applied for its objects and purposes, by the assessee. We are conscious that the assessee has not, as required to u/s. 11(2), specified per a notice in writing, to the AO the purpose/s for which income is being accumulated or set apart by it. The said notice, as explained by the Hon'ble Courts (refer: *CIT v. Nagpur Hotel Owner's Association* [2001] 247 ITR 201 (SC)), could be given even during the stage of the assessment proceedings. The assessee, however, could not have anticipated an amendment in law (which came about by way of a *proviso* to section 12A(2), inserted by Finance (No. 2) Act, 2014 w.e.f. 01.10.2014), according the benefit of registration retrospectively. As such, it is only appropriate that it, being since entitled to claim exemption u/s. 11 for the relevant year, is also allowed an opportunity to observe the required procedure in its' respect. This, in fact, is the assessee's alternate claim, raised by the ld. counsel Sh. Kalia during hearing, also finding mention in his written submissions.

The matter, accordingly, is restored back to the file of the AO to allow the assessee due opportunity to claim, following applicable procedure in its respect, exemption u/s. 11 on its entire income, including interest arising to it on the saving bank (Rs.3.47 lacs), omitted to be returned by the assesee and, therefore, assessed by the AO, as well as the interest accrued on FDRs. The AO shall adjudicate afresh, in accordance with law, allowing the assessee's due opportunity to present its' case before him.

We decide accordingly.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on October 09, 2018

Sd/-	Sd/-
(N. K. Choudhry)	(Sanjay Arora)
Judicial Member	Accountant Member

Date: 09.10.2018
/GP/Sr. Ps.

Copy of the order forwarded to:

(1) The Appellant: Citrus Estate, VPO Badal, Distt.- Sh. Muktsar Sahib
(2) The Respondent: Asstt. Commissioner of Income Tax, Circle –II, Bathinda
(3) The CIT(Appeals), Bathinda
(4) The CIT concerned
(5) The Sr. DR, I.T.A.T

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By Order